

BEFORE THE  
FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA

In the Matter of:

BILL LEONARD, THE ASSEMBLY  
REPUBLICAN LEADERSHIP FUND, AND  
CHARLES H. BELL, JR.

FPPC Case No. 99/444

OAH No. N2001080666

Respondents.

**PROPOSED DECISION**

This matter was heard before Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on October 23, 2001.

Steven Meinrath, Commission Counsel, represented complainant, the Fair Political Practices Commission.

Ben Davidian, Attorney at Law, of Bell, McAndrews, Hitltachk & Davidian, LLP, represented Bill Leonard, The Assembly Republican Leadership Fund, and Charles H. Bell, Jr.

**PROCEDURAL FINDINGS**

1. After a Probable Cause proceeding and Finding (made by stipulation) made pursuant to Government Code section 83115.5, Mark Krausse made and filed the Accusation in his official capacity as Acting Executive Director of the Fair Political Practices Commission ("FPPC").

2. Respondents timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent

adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

3. At the hearing of this matter, the parties entered into a Stipulated Statement of Facts ("Stipulation"). The Stipulation and its exhibits were marked as Exhibit 3 to this proceeding and entered in evidence. Exhibit 3 is incorporated into this Proposed Decision as if fully set forth herein.

### FACTUAL FINDINGS

1. Respondent Bill Leonard has been a member of the California Legislature since 1978. At all times relevant to this matter, respondent The Assembly Republican Leadership Fund, was a recipient committee, as defined in Government Code section 82013, subdivision (a), and was the controlled committee of respondent Bill Leonard, within the meaning of Government Code section 82016, and its treasurer was Respondent Charles H. Bell, Jr.

2. On October 20, 1998, respondents Bill Leonard, The Assembly Republican Leadership Fund, and Charles H. Bell, Jr., (hereafter "respondents") made a \$50,000 contribution to the "Friends of Phil Hawkins" committee, a controlled committee, as defined in Government Code section 82016.

3. On October 26, 1998, respondents made a \$24,000 contribution to the "Alban for Assembly" committee, a controlled committee, as defined in Government Code section 82016.

4. On October 26, 1998, respondents made a \$50,000 contribution to the "Committee to Elect Peter Frusetta," a controlled committee, as defined in Government Code section 82016.

5. On October 26, 1998, respondents made a \$25,000 contribution to the "Friends of Phil Hawkins" committee, a controlled committee, as defined in Government Code section 82016.

6. On October 26, 1998, respondents made a \$32,000 contribution to the "Mitchum for Assembly" committee, a controlled committee, as defined in Government Code section 82016.

7. On October 26, 1998, respondents made a \$25,000 contribution to the "Prenter for Assembly" committee, a controlled committee, as defined in Government Code section 82016.

8. Respondents' contributions were "Late Contributions," within the meaning of Government Code section 82036. Respondents did not file "Late Contribution Reports"

disclosing the six campaign contributions identified above, as required by Government Code section 84203.

9. Respondents attribute their failure to file Late Contribution Reports to two distinct errors. The first error occurred on October 20, or October 21 of 1998. Respondents admit that they did not prepare a Late Contribution Report reflecting their \$50,000 contribution to the "Friends of Phil Hawkins" committee. They attribute this error to inadvertence.

10. Respondents' second error occurred after they prepared a Late Contribution Report listing the five contributions made on October 26, 1998. This report was not faxed to the Secretary of State's Office, due to a clerical error. Respondents believe that there was either a clerical or a fax machine error attributable to the "huge crush" of facsimile filings of Late Contribution Reports which occurred during the late reporting period.

### LEGAL CONCLUSIONS

1. The FPPC is charged with the duty to administer, implement and enforce the provisions of the Political Reform Act of 1974, found in Government Code section 81000 through 91015.

2. The purpose of campaign reporting under the Political Reform Act of 1974 (ACT) is that receipts and expenditures in election campaigns are fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited. Government Code section 81002(a). In furtherance of that purpose, elected officers, candidates, and committees have certain filing and reporting obligations under the Act.

3. Government Code section 84203 provides, in pertinent part, that it is a violation of the Act to fail to file Late Contribution Reports. A committee that makes a late contribution is required to report the contribution pursuant to section 84203 to each office with which the candidate or committee is required to file its next campaign statement. The late contribution is to be reported within 24 hours of its receipt (In the Matter of Bonnie Wai, et al., FPPC No. 92-286 (1995)) and on subsequent campaign statements. Section 84203(b).

4. "Late contribution reports are an important part of the Act's disclosure system because they advise the public of contributions of \$ 1,000 or more received by candidates or committees during the last two weeks before an election. This is a period of intense campaign activity when large amounts of money change hands. Therefore, the Act requires such transactions to be publicly disclosed to promote a more informed electorate." In the Matter of Robert "Tim" Leslie, et al., FPPC No. 93-250 (1994); In the Matter of Yes on Measure "A" et al., FPPC No. 91-590 (1993); Lucy Killea, et al., FPPC No. 91-203 (1992); Tricia Hunter, et al., FPPC No. 91-332 (1991); In the Matter of March Fong Eu, et al., FPPC No. 89-139 (1990));

5. It has been established by a preponderance<sup>1</sup> of credible evidence that respondents Bill Leonard, The Assembly Republican Leadership Fund, and Charles H. Bell, Jr. violated Government Code section 84203 by failing to file Late Contribution Reports, as set forth in Factual Findings 1 through 10 inclusive.

6. Government Code section 83116(c) provides that the Commission may levy administrative fines of up to \$2,000 for each violation of the ACT.<sup>2</sup>

7. In order to determine the penalty to be imposed, if any, for violations of Government Code section 83116 et.seq., the circumstances of the violations must be considered. Title 2, California Code of Regulations section 18361(e)(4) sets forth the following factors, which must be weighed in making this determination.

(A) The seriousness of the violation;

(B) The presence or absence of any intention to conceal, deceive or mislead;

(C) Whether the violation was deliberate, negligent or inadvertent;

(D) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code Section 83114(b);

(E) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and

(F) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

#### *Seriousness of the Violation*

8. Respondents' violations were serious. The total amount of unreported money was significant; two hundred and six thousand dollars. This amount of money can impact the outcomes of elections; especially when the contributions are made at the "eleventh hour" of the campaign. Eleventh hour campaign contributions are of great interest to the public. The public relies on Late Contribution Reports to gain immediate access to vital information about these contributions. For this reason, Late Contribution Reports play a critical role in fair political practice.

9. Respondents argue that their failure to file Late Contribution Reports did not seriously interfere with the public's ability to ascertain which candidates were receiving

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<sup>1</sup> Pursuant to Title 2, California Code of Regulations section 18361(e)(3), findings shall be made based upon a preponderance of the evidence.

<sup>2</sup> Government Code section 83116(c) was amended subsequent to the violations alleged herein. The maximum penalty was increased to \$5,000 per violation.

campaign contributions from respondents. They contend that the public could access this information by reviewing the Late Contribution Reports filed by the candidates who received respondents' contributions. They also argue that the public could get this information from respondents' Quarterly Contribution Reports.

10. Respondents' arguments are without merit. It is unreasonable to expect the public to review respondents' Late Contribution Reports and to somehow be aware that there are missing contributions. It is unreasonable to expect the public to review Late Contribution Reports of all potential recipients of respondents' contributions in order to ascertain whether any contributions were made which were not listed on respondents' Late Contribution Reports.

11. Respondents also suggest that the public could have accessed the information on respondents' late contributions by accessing the Secretary of State's website. There, the Secretary of State would have listed information from all Late Contribution Reports it received. The theory is that the public could consult the website to determine who had received late contributions from respondents, as those parties would be reporting the contributions. Again, it is unreasonable to expect the public to distrust respondents' Late Contribution Reports, have access to and consult a web site to "double check" respondents' reporting, and then attempt to sort contributions by maker or other -wise discern who had received late contributions from respondents.

12. In sum, there is no substitute for filing Late Contribution Reports. This is the procedure the Legislature has adopted as the one most suitable for keeping the public informed of campaign contributions in a timely and direct manner. Failure to file Late Contribution Reports has serious consequences for the public's right to receive information.

#### *Intent to Deceive*

13. There was no evidence that respondents intended to deceive the public or the Secretary of State when they failed to file Late Contribution Reports.

#### *Whether the violation was deliberate, negligent or inadvertent*

14. There was no evidence that respondents' errors were deliberate. The evidence is persuasive that respondents' acts were negligent and inadvertent in that respondents failed to exercise due care in preparing and filing Late Contribution Reports.<sup>3</sup> Respondents omissions could have been avoided had they exercised more oversight over those who prepared and file the Late Contribution Reports. Respondents have corrected the office procedures which led to their omissions.

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<sup>3</sup> Respondents appear to distinguish "inadvertent" from "negligent" conduct and claim that their conduct was inadvertent. However, both terms are defined by Blacks Law Dictionary as being characterized by want of care, lack of attention or failure to pay careful attention.

*Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b)*

15. This factor is not applicable to the matter at issue.

*Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure*

16. Respondents' conduct appears to have been an isolated incident limited to the election at issue. Respondents do not have a prior record of violations of the Act and upon learning of the violations found herein, were not required to file amendments to provide disclosure.

17. Complainant argues that the serious nature of the violation warrants imposition of the maximum \$2,000 penalty. Complainant also argues that the \$2,000 penalty should be assessed for each of the six contributions for which respondents failed to file Late Contribution Reports. Respondents argue that the violations warrant a minimal penalty or a reprimand, and that the penalty should be assessed, not for each separate late campaign contribution, but for each of the two reports respondents failed to file.

18. Respondents support their position with evidence of settlements that FPPC has reached with other violators. These settlement documents purportedly show that the FPPC chose to charge violators one count of violating the Act for each 24 hour period in which a Late Contribution report was due, regardless of how many actual contributions went unreported. These settlement documents purportedly show that the FPPC did not charge each late contribution as a separate count. These settlement documents purportedly show that the FPPC imposed penalties of less than the maximum \$2,000 per violation, in instances where large campaign contributions were made.

19. The settlement documents were given no weight. These negotiated settlement agreements contain no information about the relative positions of the parties should the matter be litigated. They provide no information on the merits of the FPPC action or of the respondents' defenses. They omit the detail necessary to accurately compare the facts of the alleged violations to the violations proven herein. They omit the detail necessary to establish which penalty was being levied for which violation.

20. Complainant supports its position that maximum fines should be imposed, with documents showing that the FPPC regards the amount of the campaign contribution as a critical factor in assessing the appropriate fine. These documents were accorded no weight as they reflect FPPC policies enacted after the violations that occurred herein.<sup>4</sup>

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<sup>4</sup> It is also unclear whether these policies have been adopted and implemented by the FPPC, or are merely proposed policies.

21. The evidence is persuasive that the violations at issue herein were serious and that the amount of unreported campaign contributions was large. It is apparent from the tenor and scope of the Act, and from the language of section 84203, that each late campaign contribution is of great importance to the public and must be reported appropriately.

22. A penalty based upon the number of reports the violator fails to file within the ~~24 hour reporting period would allow violators to face only a maximum \$2,000 fine,~~ regardless of the number of late contributions the violator fails to report. Under respondents' interpretation of the Act, a committee or candidate which makes or receives numerous late campaign contributions would risk only a \$2,000 fine for failing to disclose all of the contributions it made or received in a 24 hour period. Such an interpretation of the Act would strip it of its deterrent powers.

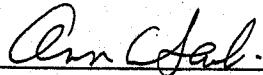
23. A violator may not diminish its culpability for failing to report each late campaign contribution by insisting that it only be penalized for the number of reports it intended to file. Accordingly, respondents are responsible for six violations of section 84203, not two violations.

24. In consideration of the Factual Findings and the Legal Conclusions, the penalty assessed against respondents for each of the six violations of section 84203 is \$1,000. The total monetary penalty is \$6,000. Respondents have not been assessed the maximum penalty, because there was no element of intent or deception in their conduct. Respondents have not been assessed a lesser penalty, because the violations were serious and the sum of money involved was large.

#### ORDER

Respondents shall pay \$6,000 to the General Fund of the State.

DATED: November 20, 2011

  
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ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings

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**ORDER NUNC PRO TUNC**

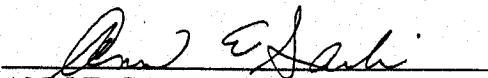
The Proposed Decision issued by Ann E. Sarli, Administrative Law Judge, Office of Administrative Hearings, on November 20, 2001, is Amended to reflect the following corrections:

On page 1, of the Proposed Decision, the name "Hitltach" is changed to "Hiltachk".

On page 6, of the Proposed Decision, the text of footnote 4 is eliminated.

On page 7, of the Proposed Decision, in the last sentence of paragraph 22, the word "At" is changed to "Act".

Dated: December 4, 2001

  
ANN E. SARLI  
Administrative Law Judge  
Office of Administrative Hearings